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3 **UNITED STATES DISTRICT COURT**  
4 **DISTRICT OF NEVADA**

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6 JAMES D. NOLAND JR.,

7 Plaintiff,

8 v.

9 ORGANO GOLD INTERNATIONAL, INC.,  
10 et al.,

11 Defendants.

Case No. 2:18-cv-01275-JAD-CWH

**ORDER**

12 Presently before the court is plaintiff James D. Noland Jr.'s motions for an order for  
13 substituted service (ECF Nos. 51, 63) on defendants Foo and Morand. Also before the court is  
14 plaintiff's motion for leave to file a supplemental motion for order of substituted service on  
15 defendant Foo (ECF No. 57).

16 This case arises from allegations that plaintiff's partners, defendants Bernard Chua and  
17 Shane Morand, conspired with defendants Holton Buggs Jr. and Jamie Foo to defraud plaintiff of  
18 his ownership shares in Organo Gold Enterprises Inc. (Compl. (ECF No. 1).) Plaintiff now  
19 moves for substituted service of defendant Foo and defendant Morand. Plaintiff originally sought  
20 to serve Foo by serving a representative at her last known place of business. (Mot. Request for  
21 Order (ECF No. 51).) However, plaintiff now seeks to amend his request to serve defendant Foo  
22 by mailing the summons to Foo's residence in British Columbia and to have a process server post  
23 the summons, complaint and order on the door of her British Columbia residence. (Mot. for  
24 Leave (ECF No. 57-2) at 3-4.)

25 Plaintiff also requests to serve Morand by email and through his social media accounts.  
26 (Mot. Request for Order (ECF No. 63).) Per the court's order, plaintiff submitted additional  
27 briefing in support of his request. (Additional Briefing (ECF No. 76).) Given that plaintiff now  
28 seeks to amend his original motion for substituted service as defendant Foo, the court will deny

1 that motion (ECF No. 51) as moot and address the arguments in plaintiff's amended motion (ECF  
2 No. 57-2) and his motion for substituted service on Morand (ECF No. 63).

3 Federal Rules of Civil Procedure Rule 4(f) govern service on an individual in a foreign  
4 country. Rule 4(f) authorizes foreign service of process on an individual "by any agreed upon  
5 means of service that is reasonably calculated to give notice, such as those authorized by the  
6 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents . . . ." Fed. R.  
7 Civ. P. 4(f)(1).<sup>1</sup> Service on applicable defendants must conform to the requirements of the Hague  
8 Convention on the Service Abroad of Judicial and Extrajudicial Documents (the "Convention"),  
9 to the extent that it applies. *See Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694,  
10 699-706 (1988) (indicating that compliance is mandatory to all cases to which the Hague Service  
11 Convention applies); *see also service Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004). As  
12 both the United States and Canada are signatories to the Convention, the Convention is applicable  
13 here. *Hague Convention*, 20 U.S.T. 361 (1965).

14 Here, plaintiff submits that the Convention applies only as to defendant Foo, whose  
15 address is known, and that the Convention does not apply to defendant Morand, whose address is  
16 unknown. (Additional Briefing (ECF No. 76).) Plaintiff cites to *Volkswagenwerk*  
17 *Aktiengesellschaft v. Schlunk* in support of his argument. 486 U.S. 694, 699- (1988). In *Schlunk*  
18 the Supreme Court held that the Convention does not apply when a valid service of process is

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20 <sup>1</sup> Federal Rule of Civil Procedure 4(f) provides, in relevant part:

21 Unless federal law provides otherwise, an individual . . . may be served at a place  
22 not within any judicial district of the United States:

23 (1) by any internationally agreed means of service that is reasonably calculated to  
24 give notice, such as those authorized by the Hague Convention on the Service  
25 Abroad of Judicial and Extrajudicial Documents;

26 (2) if there is no internationally agreed means, or if an international agreement  
27 allows but does not specify other means, by a method that is reasonably calculated  
28 to give notice:

(A) as prescribed by the foreign country's law for service in that country in  
an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter  
of request; or

(C) unless prohibited by the foreign country's law, by:

(i) . . .

(ii) using any form of mail that the clerk addresses and sends to the  
individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

1 conducted on a foreign corporations' domestic subsidiary, as permitted by state law. *See id.* at  
2 706-707. Unlike *Schlunk*, plaintiff seeks to serve two individuals, not corporations. Additionally,  
3 plaintiff no longer proposes to serve an "agent" of either defendant, nor offers any legal basis to  
4 support his proposition that he may do so. Thus, the court is not persuaded by this line of  
5 reasoning.

6 Nonetheless, plaintiff concedes that the Convention applies to defendant Foo. *See* Hague  
7 Convention, art. 1, 20 U.S.T. at 362 (the Convention applies where one seeks to "transmit a  
8 judicial . . . document for service abroad . . ."). The court directs plaintiff to Article 2 of the  
9 Convention, where the Convention states that contracting states are to designate a Central  
10 Authority to handle requests for service from other contracting states. *See id.* art. 2. To that end,  
11 plaintiff is advised to comply with Canada's Central Authority's process for service. Given that  
12 plaintiff has not demonstrated compliance with the Convention, the court will deny his amended  
13 motion for substituted service on defendant Foo without prejudice.

14 Plaintiff also submits that the place of residence for defendant Morand is unknown, as he  
15 has not resided at his last known address for the last five years. (*See* Mot. Request for Order  
16 (ECF No. 63) at 3.) However, plaintiff also purports that Morand is a resident of Canada. Given  
17 that Canada and the United States are signatories to the Convention, plaintiff must comply with  
18 Canada's Central Authority's process for service as to defendant Morand. The court will  
19 therefore deny plaintiff's motion for substituted service as to defendant Morand without  
20 prejudice.

21 IT IS THEREFORE ORDERED that plaintiff's motion for leave to file a supplemental  
22 motion for order of substituted service on defendant Foo (ECF No. 57) is GRANTED.

23 IT IS FURTHER ORDERED that the clerk of court must detach and file plaintiff's  
24 amended motion for an order of substituted service (ECF No. 57-2).

25 IT IS FURTHER ORDERED that plaintiff's amended motion for an order of substituted  
26 service is DENIED without prejudice.

27 IT IS FURTHER ORDERED that plaintiff's motion for an order for substituted service  
28 (ECF No. 51) is DENIED as moot.

1 IT IS FURTHER ORDERED that plaintiff's motion for an order for substituted service  
2 (ECF No. 63) is DENIED without prejudice.

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4 DATED: December 4, 2018

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8 C.W. HOFFMAN, JR.  
9 UNITED STATES MAGISTRATE JUDGE  
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